Bail Slip

The Appellant/ Accused namely Mr. Rajasekaran was already released on bail in and by the order of this Court dated 30.5.2006 and made in Crl.M.P.NO.3124 of 2006 in Crl.Appeal No.1106 of 2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2006

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

Criminal Appeal No.1106 of 2004

Rajasekaran — Appellant/ Sole Accused

v.

State, by Inspector of Police,
Chengalpattu Town Police station,
Kancheepuram District
Crime No.922/2000 — Respondent/ Complainant

Criminal Appeal filed under section 374 (2) of the Code of Criminal Procedure against the judgment dated 21.08.2004 made in sessions case No.580 of 2003 on the file of the Additional Sessions Judge Fast Track Court No.I Chengalpattu.

For appellant : Mr.Ashok Kumar,
Senior Counsel for
Mr.B.Kumarasamy

For respondent : Mr. P.Kumaresan,
Additional Public Prosecutor

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JUDGMENT

(Judgment of the Court was delivered
by K.RAVIRAJA PANDIAN, J.)

The appeal is filed by the appellant/sole accused before the trial Court, against the judgment convicting him for the offence under section 302 of the Indian Penal Code and sentencing him to life imprisonment along with a fine of Rs.5000/- carrying a default sentence of rigorous imprisonment for one year. Though the accused was charged under section 201 of the Indian Penal Code also, he was acquitted of the said charge by the trial Court.

2. The charge for which the appellant/accused was convicted was that on 23.11.2000 between noon and evening, at the residence of the deceased Pankajavalli at B5, Tamil Nadu Housing Board Quarters, Chengalpattu, enraged against the refusal of the deceased to give money to the accused and on account of the frequent wordy quarrels between the accused and the deceased, with an intention to cause the death, the accused caused her death by beating on her head with casuarina stick and by dashing her head on the wall and on the floor, by catching hold of her tuft and strangulating her with nylon rope.

3. The brief facts of the case are : The accused is the husband of the deceased. P.W.1 is the younger brother of the deceased and P.W.9 is the elder brother. P.W.2 is the mother of P.Ws.2, 9 and the deceased. In the year 1994, the deceased got married to the accused at the instance of P.W.3, who was a colleague of P.W.1 and also classmate of the accused. It is the case of the prosecution that at the time of marriage, the accused stated that he was working as a manpower agent, but he was not doing any such work. After the marriage he used to stay at Tittakudi and come over to Chengalpattu frequently, as the deceased was working in the Government Hospital, Chengalpattu. There were frequent quarrels between the accused and the deceased. P.W.1 who is residing near Chengalpet used to visit his sister now and then. P.W.2, the mother of the deceased was staying along with the deceased in the Housing Board quarters. But, six months prior to the date of the occurrence, she left for P.W.1's house, as the accused quarrelled with the deceased about the stay of P.W.2.

4. On 24.11.2000 P.W.1 received a message from P.W.3 that the deceased committed suicide and the accused had taken the dead body of the deceased to Tittakudi for performing final rites. Immediately, P.W.1 came over to Chengalpattu and inquired in the Government Hospital as to whether postmortem was conducted on the body of the deceased. After coming to know that no postmortem was conducted, he entertained a suspicion about the death of the deceased and he complained to the respondent police station under Ex.P.1.

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5. P.W.17, the Inspector of Police on the basis of the complaint of P.W.1, Ex.P.1 registered a case in crime No.922/2000 under section 174 of the Code of Criminal Procedure under Ex.P.8. He went to the place of occurrence and prepared the observation mahazar, Ex.P.2, in the presence of P.W.8 Jayachandran and Rajasekaran. He also prepared the rough sketch under Ex.P.9. He also enquired and obtained statements from Narayanamurthy (P.W.1), Kalaimagal, Selvaguru, Siddarthan (P.W.3), Anandaselvi, Parimala, Thara, Rani (P.W.5), Abdullah (P.W.6), Vellaiyan(P.W.7), Ramalingam, and Jayachandran (P.W.8). As the death was caused within seven years from the date of marriage, P.W.17 sent a requisition for enquiry to the Sub-Collector. He directed P.W.10, the Sub-Inspector and Constable, Ramamurthy and Vijaya, to get the body back from Tittakudi. P.W.10 accordingly went to Tittakudi and as the accused refused to hand-over the body, he took the assistance of the local Sub Inspector, P.W.11 and brought back the body. After bringing the body on 25.11.2000 at 4.50 a.m and on intimation the Sub-Collector conducted enquiry over the body of the deceased from 8.50 a.m to 10.25 a.m. The body was then subjected to postmortem.

6. P.W.15, Dr.Murugesan, who conducted postmortem on the body of the deceased gave Ex.P.7 postmortem certificate, opining that the deceased would appear to have died of head injuries with strangulation. The injuries found on the body are found noted in the certificate and they are :

Abrasions.

1.5 x 4 cm on the right side forehead on dissecting bruising of the underlying tissues seen.
2.2 x 1 cm on the dorsum of right hand.
3.2 x 1 cm on the front of upper part of right leg.
4.3 x 2 cm on the dorsum of left foot.
5.1 x 1 cm on the inner side middle of lower lip.
6.1 x 1 cm on the inner side middle of lower lip.
7.1 x 1 cm on the innerside of the left side of lower lip.
8.1 x 1 cm on the inner side of middle of upper lip as dissection passing over the lower lip, upper lip and gums.

Contusions :

1.8 x 6 x 1 cm on the right side tempo-parietal region seen.
2.6 x 5 x 1 cm on the right side occipital region on scalp.
3.6 x 5 x 1 cm on the left side occipital region of scalp.

On dissection :

1.Sub Arachnoid haemorrhage 8 x 5 x 1 cm on the right side tempero parietal lobe of brain.
2.Sub arachnoid haemorrhage 5 x 4 x 1 cm on the left side frontal lobe of the brain. Intra-cerebral haemorrhage on both the cerebrum and brainstems.

7. On the basis of the postmortem certificate, the crime was altered into one under section 302 and 201 of the Indian Penal Code and express copy of the altered F.I.R.- Ex.P.10 was sent to the concerned Court. The accused was

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arrested at 3.30 pm on 25.11.2000. He voluntarily gave a confession statement in the presence of P.W.13 and another, the admissible portion of which was marked as Ex.P.3. Pursuant to the confession statement, he produced the nylon rope – M.O.1 and the casuarina stick – M.O.2, which were used for committing the offence from the loft of the house of the deceased and they were recovered under the mahazars, Exs.P.4 and P.5. After completion of the investigation, he filed the final report.

8. When the appellant was questioned under section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied all the circumstances as false and he stated that his wife was a heart patient. Since she was transferred to Chengalpattu, he used to visit her fortnightly. On the date of the occurrence, when he went to visit his wife and son, his son told him that his mother had gone to temple and therefore he has to wait in the opposite house. The accused stayed in P.W.3's house for a while and when he returned to the house of the deceased at 10.00 pm, he found her hanging and dead. He informed P.W.3 and requested him to arrange for a car to take the body to Tittakudi. He also requested him to inform everybody about the dead body being taken to Tittakudi. The accused did not examine any witness on his side, nor did he mark any document.

9. The trial Court, on appreciation of evidence and based on the materials available on record, found the accused guilty of the offence under section 302 of the Indian Penal Code and sentenced him to undergo life imprisonment with fine as referred to above.

10. The judgment of the trial Court is assailed on the ground that the circumstances relied on by the trial Court to arrive at the conclusion that the appellant committed the murder of the deceased cannot be regarded as a conclusive proof and as such, the conviction has to be set aside. It is further submitted that the conduct of the appellant in informing P.W.3 about the death of the deceased with a request to pass on the information to P.W.1, and the intention of the accused to take the body of the deceased to Tittakudi for performing final rites would prove that the accused was not involved in the crime, as put forth by the prosecution. It is further submitted that the injuries found on the deceased could have been caused when the body was taken to Tittakudi in the dickey of the car. Apart from that, the conduct of the accused in informing P.W.9 while he was taking the dead body to Tittakudi from Achirupakkam would also go against the prosecution case. He further contended that the version of the accused that he, along with his son, were in the house of P.W.3 from 5.30 p.m to 9.30 p.m has not been dislodged by the prosecution. Hence, the accused cannot be fastened with the guilt of committing the murder of the deceased during the intervening time.

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11. We heard the learned counsel for the appellant and also the Additional Public Prosecutor on the above points.

12. Before considering the submissions made by the learned counsel for the appellant, we make it clear that this Court is not oblivious of the legal position that in a case of present nature, where there is no eye witness and the entire case rests on the circumstantial evidence, the Court should be very cautious to see that chain of events be complete and there is no snap in the chain and the evidence adduced to have the complete chain should point only to the guilt of the accused.

13. Now, let us consider the submissions made on behalf of the appellant. Though the submissions above referred to seem to be appealing at the first instance, on the second look, we are not able to concur with the counsel for the reason that it is the case of the appellant that the deceased has committed suicide by hanging. Of-course, he has immediately informed about it to P.W.3, a close friend of the accused as well as P.W.1, but P.W.3 has not deposed that he had seen the body hanging and no material whatsoever which has been used for hanging was available in the place of occurrence. The conduct of the appellant taking the body immediately to Tittakudi, of-course making a request to P.W.3 to inform the same to P.W.1, who is residing very near to Chengalpattu causes a strong suspicion about the story of suicide. Had really the deceased committed suicide, as projected by the appellant, ordinarily he would have informed the same to the police immediately without altering any material of evidentiary value available at the scene of occurrence and on arrival of the police, he would have proceeded further to subject the body for postmortem. No such course of action has been followed. The conduct of the appellant informing P.W.9 on his way to Tittakudi is also not advancing the case of the appellant, but rather it supports the case of the prosecution, because the appellant has informed P.W.9 that the body was being taken to Tittakudi after conducting postmortem on it. That part of the statement has not been made to P.W.3. While visualising the situation, the Court could only come to the conclusion that the appellant has hurried up the matter by taking the body to Tittakudi without getting the body postmortem conducted, however, informing P.W.9 that the body is taken to Tittakudi only after conducting of postmortem.

14. The other contention of the learned counsel for the appellant about the conduct of the accused in availing the assistance of P.Ws.3 and 12 for taking the body of the deceased to the car could not also destroy the prosecution case, in our view. If the body has been carried by the accused himself, that would have caused suspicion in the minds of the other residents in the quarters. But when a person is carried by two or more persons, in this case, the deceased was carried by the appellant/accused, P.W.3, a known person and P.W.12, the supervisor of the colony, the others would have been under the impression that the deceased was being carried either for

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treatment or for transporting her to some other place. P.W.5 has deposed that when she saw the deceased was taken to the car by the accused, P.Ws.3 and 12, she was of the view that the deceased was sick and was taken by them for treatment. Thus, we are of the view that seeking the assistance of P.Ws.3 and 12 would not in any way fortify the conduct of the accused to support the version of the accused that the deceased has committed suicide. It can only be regarded as an enactment of a drama to cover up the guilt of the accused. It is also pertinent to note that P.W.12 has enquired the appellant/accused as to whether he has reported about the death of the deceased to the appropriate authorities, as she was a Government employee, the appellant bluntly stated that he has already informed the authorities concerned about her death, but the said statement is an utter false. In this context, an useful reference can be made to a decision of the Supreme Court of India rendered in the year 1955, but holds good even today, in the case of Deonandan Mishra v. State of Bihar, AIR 1955 SC 801, wherein it has been held that,

> "In a case of circumstantial evidence, not only should the various links in the chain of evidence be clearly established , but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case where the various links have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence."

15. The other contention raised on behalf of the appellant that the injuries found on the deceased, as noted in Ex.P.7, postmortem certificate, would have been caused while taking the body in the dickey for a long distance of the car cannot also be accepted. Of course taking the body in a dickey would cause some abrasions on the body, but not injuries of the nature found on the head and neck of the deceased. As per the postmortem report, there were as many as eight abrasions of the given dimensions and three contusions, the dimensions given are also very large. The details of the injury have been given in paragraph-6 above, while narrating the facts. Further, the postmortem report also contains details about the strangulation in the following manner :

> A well defined, transverse ligature mark. Abrasion 36 x 2 cm completely encircling the neck at 15 cm lower level of lower part of thyroid cartilage as follows : On the front of the neck the ligature mark was 7 cm

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above the supra sternal notch, 5 cm below the mandible, chin, and 2 cm in width. On the left side of neck, the ligature mark was 5 cm below the left mastoid prominence, 2 cm in width, on the right side of neck, the ligature mark was 6 cm below the right side of mastoid prominence, 2 cm in width on the back of the neck, the ligature mark was 7 cm above the 7th cervical spine and 6 cm below the occipital protuberance and 2 cm in width. The margins of the ligature marks were intermittently abraded and bruised. On dissection, the tissues underlying the ligative marks were bruised. The muscles and subarachnoid tissues on the thyroid cartilage, brynx and trachea were bruised.

On the above injuries and the ligature marks, the opinion of the doctor was that the deceased would appear to have died of head injuries with strangulation 34 to 48 hours prior to autopsy. If we consider the arguments of the appellant/accused about the cause of the injuries, with reference to the injuries stated in the postmortem certificate, we are of the view, the argument has been raised only for abrupt rejection.

16. After the arrest of the petitioner on 25.11.2000 on the basis of the confession statement, he produced the nylon rope and the casuarina stick, M.Os.1 and 2 from the loft of the house of the deceased. Conveniently, learned counsel for the appellant avoided this part of the factual situation in his arguments. This Court is, therefore, of the view that the injuries found on the head and neck of the deceased and the recovery of the material objects 1 and 2 on the confession statement given by the appellant/accused, from the loft of the house of the deceased, would point to the guilt of the appellant/accused only.

17. For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court in convicting the appellant. The appeal fails and it is dismissed. The learned Sessions Judge shall take steps to secure the custody of the accused to undergo the remaining period of sentence.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Additional Sessions Judge,
Fast Track Court No.I, Chengalpattu

2. Do The Principal District and Sessions Judge,
Chengalpattu (For information)

3. The Judicial Magistrate No.I
Chengalpattu.

4. Do Thro The Chief Judicial Magistrate
Chengalpattu (For information)

5. The District Collector
Chengalpattu

6. The Director General of Police,
Mylapore, Madras.

7. The Superintendent,
Central Prison,
Cuddalore.

8. The Inspector of Police,
Chengalpattu Town Police Station,
Chengalpattu (Crime NO.922 of 2006)

9. The Inspector of Police,
Town Police Station,
Ooty

10. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.B.Kumarasamy, Advocate, Sr. 47208

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